APPENDIX

Filed Jan. 3, 1969. Vera L. Howard, Clerk U.S. District Court. By. LaDana Smith, Deputy.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

THE FIRST NATIONAL BANK OF CUSHING, Cushing, Oklahoma, a national banking association, Plaintiff,

vs.

SECURITY MUTUAL CASUALTY COMPANY, a corporation, Defendant and Third Party Plaintiff,

vs.

ROBT. W. ADAMS, ALMA M. BLANK, FRANK G. BERRY and GEORGE M. BERRY, Executors of the Will of JAMES E. BERRY, Deceased, LEVI SWINGLE, ARTHUR BLAINE IMEL, E. L. ROBERTS, D. A. GRIFFIN and GEORGE M. BERRY,
Third Party Defendants.

CORRECTED FINDINGS OF FACT

As provided by Rule 60(a), Federal Rules of Civil Procedure, the findings of fact of the Court, dated and filed herein on November 27, 1968, are amended and corrected as follows:

1.

The last sentence of Finding 12, appearing on page 10, is deleted and the following is substituted therefor:

"Swingle fraudulently caused renewals of the note of John E. Jones to be recorded on the books of plaintiff, together with payments of interest to July 1, 1964. Interest on the note was not, in fact, paid by John E. Jones or anyone else for his benefit. Rather, the interests payments

fraudulently recorded by Swingle constituted a part of the checks of Reagin held by Swingle in the cycle, for which recovery is provided elsewhere herein. The Court finds that this loss in the amount of $80,000.00 is truly a fraudulent loss and is the type of loss upon which the plaintiff is entitled to recover interest from July 1, 1964, until paid.

2.

The first three sentences of Finding 17, appearing on page 13 are deleted and the folowing is substituted therefor:

"After the above-described disclosures were made by Swingle on October 13, 1964, Adams sought the advice of Elmo Thompson, executive vice-president of the First National Bank of Tulsa, Oklahoma, with whom Adams had quite often discussed matters relating to plaintiff bank. Thompson introduced Adams to Frank E. Brown, a senior national bank examiner who was engaged in an examination of the First National Bank of Tulsa. Adams told Brown of the holding of checks of Reagin Trucking Company. Brown then took a crew of examiners to plaintiff bank and arrived at 2:00 p. m. of the same day on which he had met with Adams and Thompson. He then commenced an examination of plaintiff bank which was completed at 9:45 p. m. on November 4, 1964. (Although Brown, in his testimony, stated that his meeting with Adams and Thompson occurred on October 14, 1964, the correct date is apparently October 15, 1964, as that is the date of commencement shown in the report of examination.) (R. 264-6, 386-7, Defendant's Exhibit 8, pg. 1)."

3.

The first sentence of the last paragraph of Finding 20(a) commencing on page 15 is deleted and the following is substituted therefor:

"In accordance with the Court's Finding No. 20(a) covering the loss of $56,800.00, the Court holds and finds that such loss is and was the result of fraudulent, dishonest and wrongful acts and misappropriations of plaintiff's funds by Swingle, acquiesced in by Roberts."

4.

The following is added as an addition to Finding 7 ending on page 7.

"The turnback books had been maintained in the bookkeeping department of plaintiff bank since at least 1923 (Defendant's Exhibit 26), but, prior to commencement by Swingle of the practice of "cycling" checks, as hereinafter described in Finding No. 9, there is no evidence of any irregularity in the handling and payment of checks within plaintiff bank."

5.

The following is added as an additional finding of fact, to be inserted on page 20 and numbered 27 A:

"In order to prevent and avoid the bankruptcy and closing of plaintiff bank because of the losses sustained by it as the result of the dishonest, fraudulent and wrongful acts of Swingle and Roberts, the directors and stockholders of plaintiff bank voluntarily paid an additional $1,050,000.00 into the capital and surplus of plaintiff bank. (R. 416-21)"

Dated this 2nd day of January, 1969.

LUTHER BOHANON
United States District Judge